

AF/3726  
JCo  
IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

EUGENE S. DUDASH ET AL.

Serial No.: 09/820,147

Filed: March 28, 2001

For: **ATTACHMENT OF HEAD REST GUIDE TUBE  
TO VEHICLE SEAT FRAME**

Attorney Docket No.: LEAR 0847 PUS



Group Art Unit:3726

Examiner: J. Cozart

**APPEAL BRIEF**

**Mail Stop AF**

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This is an appeal from the final rejection of claims 13-18 in the Office Action dated March 16, 2004.

**I. REAL PARTY IN INTEREST**

07/19/2004 HAL111 00000009 09820147

01 FC:1402

330.00 OP

The real party in interest is Lear Corporation, a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 21557 Telegraph Road, Southfield, Michigan 48034, as set forth in the assignments recorded in the U.S. Patent and Trademark Office on June 7, 1996, Reel 8151/Frame 0133, and on August 28, 1996, Reel 8110/Frame 0635.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8**

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450 on:

July 14, 2004  
Date of Deposit

Mark E. Stuenkel  
Name of Person Signing

  
Signature

**II. RELATED APPEALS AND INTERFERENCES**

There are no pending appeals or interferences related to the present appeal.

**III. STATUS OF CLAIMS**

This application was filed as a divisional application on March 28, 2001, along with a preliminary amendment. The application as amended by the preliminary amendment included claims 13-21. During prosecution, claims 19-21 were withdrawn from consideration by the Examiner, and claim 13 was amended. Claims 13-18 were finally rejected by the Examiner in an Office Action mailed May 20, 2002, and that rejection was the subject of a prior appeal. The Board of Patent Appeals and Interferences then reversed the Examiner's final rejection in a Decision on Appeal mailed June 23, 2003. Prosecution was reopened, but the Examiner again finally rejected claims 13-18. Claims 13-18 are the subject of this appeal, and are reproduced in Appendix A.

**IV. STATUS OF AMENDMENTS**

No amendment after final rejection was filed.

**V. SUMMARY OF THE INVENTION**

The invention provides a method of attaching a head rest guide tube to a seat back frame that includes a substantially flat section having opposing sides with an aperture formed therethrough. The method includes the following steps: (a) inserting the guide tube into the aperture; and (b) swaging the guide tube over the flat section of the seat back frame, whereby to secure the guide tube within the aperture.

In another expression of the invention, a method of attaching a head rest guide tube to a seat back frame having an aperture extending therethrough includes the following steps: inserting the guide tube into the aperture; and swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame.

In yet another expression of the invention, a method is provided for attaching a head rest guide tube to a seat back frame having a flat portion, wherein the flat portion has an aperture extending therethrough. The method includes the following steps: forming a first radially extending swaged portion on the guide tube; inserting the guide tube into the aperture; and forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, and such that the swaged portions abut the flat portion to thereby secure the guide tube to the seat back frame.

Because the invention involves attaching a head rest guide tube to a seat back frame utilizing a swaging process, the guide tube may be attached to the frame without welding.

## **VI. ISSUES**

1. Claims 13-18 were rejected under § 103(a) as being unpatentable over Applicants' Admitted Prior Art (AAPA) in view of U.S. Patent No. 3,327,385 to Shaver. The first and only issue is whether the Examiner has made a *prima facie* case that claims 13-18 are unpatentable under § 103(a) over AAPA in view of Shaver '385.

## **VII. GROUPING OF CLAIMS**

Claims 13, 14 and 17 are the independent claims involved in the appeal and may be grouped together along with their associated dependent claims.

### **VIII. ARGUMENT**

#### **1. The Examiner Failed To Make A *Prima Facie* Case Under 35 U.S.C. § 103(a)**

The Examiner failed to establish proper motivation for combining AAPA with Shaver '385. Each of the independent claims involved in the appeal recites a swaging step, or a step of forming a swaged portion, for attaching a head rest guide tube to a seat back frame. In the final Office Action mailed March 16, 2004, the Examiner acknowledged that AAPA does not disclose any of the claimed swaging steps or steps of forming swaged portions, but argued that Shaver '385 discloses such steps. (See pages 2 and 3 of the Office Action). The Examiner further argued that the motivation for combining these references is provided by Shaver '385,

because Shaver deals with providing an alternative manner in which to connect a frame and a tubular member, Shaver discloses that connecting the members in the manner described allows for the use of light weight materials wherein there is no undesirable weakening or lack of durability, and there is reduced cost in using light weight materials for the constructed assembly. (See pages 4 and 5 of the Office Action).

Contrary to the Examiner's assertion, Appellants respectfully believe that there is no suggestion or motivation for combining AAPA with Shaver '385. As noted by the United States Court of Appeals for the Federal Circuit, there are three possible sources for a motivation to combine references: "the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In Re Rouffet*, 149 F.3d 1350, 47 UPQ2d 1453 (Fed. Cir. 1998).

In this case, the cited references are in different fields of endeavor and are directed to different problems. More specifically, AAPA is directed to the problem of attaching a headrest guide tube to a seat back frame, while Shaver '385 is directed to a method of making ladders.

Regarding the teachings of the prior art, AAPA discloses welding headrest guide tubes to a seat back frame, and, therefore, teaches away from the process taught by Shaver '385. Furthermore, although Shaver '385 discloses connecting a ladder rung to a side rail using a swaging process, Shaver '385 does not disclose that swaging is an alternative to welding. To the contrary, Shaver '385 teaches that the disclosed method of making a ladder permits the use of light weight materials in place of heavier materials such as wood, which is not a weldable material. (See Shaver '385, col. 1, ll. 18-39.)

Moreover, the Examiner failed to identify or explain any specific understanding or principle within the knowledge of a skilled vehicle seating artisan that would motivate one with no knowledge of the present invention to make the combination.

For these reasons, Appellants respectfully believe that one skilled in the vehicle seating art, armed with the knowledge of AAPA, would not be motivated to look to the non-analogous ladder art, and more specifically to Shaver '385, for a solution to the problem of attaching a headrest guide tube to a seat back frame. In that regard, it is noted that "[t]he combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness." *In re Oetiker*, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992). As a result, Appellants respectfully believe that the Examiner has failed to make a *prima facie* case that claims 13-18 are unpatentable under § 103(a) over AAPA in view of Shaver '385, and that the rejection should therefore be reversed.

In addition, Appellants respectfully believe that prior to Appellants' invention, no one conceived the idea of attaching head rest guide tubes to a seat back frame using a swaging process even though the teachings of Shaver '385 were available since at least June 27, 1967. Significantly, Appellants' invention satisfied a long felt but previously unsatisfied need for an improved method of attaching head rest guide tubes to a seat back frame.

Moreover, the invention is currently being successfully utilized with several vehicle lines. This supports the lack of motivation to combine AAPA with Shaver '385.

### **CONCLUSION**

The Examiner's proposed combination of references is improper. Therefore, the final rejection of claims 13-18 should be reversed.

The fee of \$330.00 as applicable under the provisions of 37 C.F.R. § 1.17(c) is enclosed. Please charge any additional fees or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978. A duplicate of this notice is enclosed for this purpose.

Respectfully submitted,

**EUGENE S. DUDASH ET AL.**

By:   
Mark E. Stuenkel  
Registration No. 44,364  
Attorney for Appellants

Date: July 14, 2004

**BROOKS & KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075  
Phone: 248-358-4400  
Fax: 248-358-3351

Enclosure - Appendix

## **IX. APPENDIX A - CLAIMS ON APPEAL**

13. A method of attaching a head rest guide tube to a seat back frame having a substantially flat section having opposing sides with an aperture formed therethrough, the method comprising:

- (a) inserting the guide tube into the aperture; and
- (b) swaging the guide tube over the flat section of the seat back frame, whereby to secure the guide tube within the aperture.

14. A method of attaching a head rest guide tube to a seat back frame having an aperture extending therethrough, the method comprising:

inserting the guide tube into the aperture; and  
swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame.

15. The method of claim 14 further comprising swaging the guide tube to form an additional swaged portion on the guide tube, wherein the additional swaged portion cooperates with the swaged portion to secure the guide tube to the seat back frame.

16. The method of claim 15 wherein the step of swaging the guide tube to form an additional swaged portion is performed prior to the step of inserting the guide tube into the aperture.

17. A method of attaching a head rest guide tube to a seat back frame having a flat portion, the flat portion having an aperture extending therethrough, the method comprising:

forming a first radially extending swaged portion on the guide tube;  
inserting the guide tube into the aperture; and

forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, and such that the swaged portions abut the flat portion to thereby secure the guide tube to the seat back frame.

18. The method of claim 17 wherein the step of forming a first swaged portion is performed prior to the step of inserting the guide tube into the aperture.